

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SECOND APPEAL No. 155 of 1981

For Approval and Signature:

Hon'ble MISS JUSTICE R.M.DOSHIT

=====

1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO
2. To be referred to the Reporter or not? : NO
3. Whether Their Lordships wish to see the fair copy of the judgement? : NO
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO
5. Whether it is to be circulated to the Civil Judge? : NO

MOHANBHAI BHIKHABHAI

Versus

BAI DUDHIBEN DAUGHTER OF CHHANA KHALPA, SINCE DECEASED

Appearance:

MR PV HATHI for appellants
Respondent No. 1 deleted
NOTICE SERVED for Respondent No. 3
MR DB MEHTA for MR DD VYAS for Respondent No. 7

CORAM : MISS JUSTICE R.M.DOSHIT

Date of decision: 17/10/2000

ORAL JUDGEMENT

This appeal arises of the judgment and order dated 20th November, 1980, passed by the learned District Judge, Valsad, in Regular Civil Appeal No. 86/77,

arising of the judgment and order dated 14th July, 1977, passed by the learned Civil Judge (SD) Gandevi, in Civil Suit No. 212/73. The appellants before this court are the plaintiffs.

The plaintiffs are the heirs and legal representatives of one Bhikha Chhana and challenge the validity of the Will dated 7th January, 1967, executed by the deceased Chhana Khalpa, the father of Bhikha Chhana. It was alleged that the lands bequeathed by the testator-Chhana Khalpa in favour of the defendants nos. 1 and 7 were the ancestral property, for which the payment had been made by late Bhikha Chhana, and the testator Chhana Khalpa had no right to dispose of the said lands by a will. It was also alleged that the said bequest had been made by the testator Chhana Khalpa while he was not in sound state of mind.

Both the courts below have recorded a finding that the lands in question were self-acquired property of the testator Chhana Khalpa and he was exclusive owner of the said lands. The courts have also recorded a finding that the testator Chhana Khalpa was in sound state of mind when the disputed will was executed. It has also been found that some 20 to 25 years before his death, the testator Chhana Khalpa was driven out of his house by late Bhikha Chhana; that the testator Chhana Khalpa was residing with the defendants nos. 1 and 7 atleast since the year 1951. In view of the above findings recorded by the courts below, the suit of the plaintiff and the appeal, both have been dismissed.

Mr. Hathi has contended that ordinarily, it is the son to whom the property is bequeathed and the fact that the lands in question have been bequeathed in favour of the defendants nos. 1 and 7 i.e. the daughter and the grand-son, through the daughter of the testator Chhana Khalpa, rouses suspicion that the testator Chhana Khalpa was not in a sound state of mind at the time he executed the will. I see no substance in this argument.

In view of the concurrent findings of facts recorded by both the courts below, the appeal is dismissed with costs throughout.

[Miss R.M Doshit, J.]

JOSHI